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IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST

ABID M. BUTT,

d/b/a ABID BUTT COMPANY,

RESPONDENT.

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FINAL DECISION AND ORDER

[Case No. LS 9711201 AUC]

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

*Abid M. Butt*  
*8487 Weems Road*  
*Manassa, VA 20110*

*State of Wisconsin*  
*Auctioneer Board*  
*1400 East Washington Avenue*  
*P.O. Box 8935*  
*Madison, WI 53708*

*State of Wisconsin*  
*Department of Regulation and Licensing*  
*Division of Enforcement*  
*1400 East Washington Avenue*  
*P.O. Box 8935*  
*Madison, WI 53708*

At a prehearing conference held on May 12, 1998, the parties agreed that there was no need for an evidentiary hearing in this matter, and that the issues in the proceeding could be decided as a matter of law upon the submissions of the parties. Accordingly, an evidentiary hearing was not held in this case. The respondent, Abid M. Butt, was represented by his attorney, Robert M. Hesslink, Jr., Hesslink Law Offices, S.C., 200 Enterprise Drive, P.O. 930005, Verona, Wisconsin 53593-0005. The complainant was represented by attorney, Charles J. Howden, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

The administrative law judge filed his *Proposed Decision* on December 4, 1998. Complainant's attorney filed *Complainant's Objections to Proposed Decision* on December 17, 1998. Respondent's attorney filed a *Response to Complainant's Objections to Proposed Decision* on December 28, 1998.

Based upon the entire record herein, the Auctioneer Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The respondent, Abid M. Butt, is licensed to practice as an auctioneer in the state of Wisconsin under license number 52-1065, originally granted on October 31, 1995.

2. Mr. Butt does business under the name of Abid Butt Company.

3. On or about January 22, 1992, the Virginia Board of Auctioneers issued a Consent Order involving Mr. Butt and imposed a "monetary penalty" of \$900 against him for violation of regulations.

4. On or about March 20, 1995, the Texas Department of Licensing and Regulation issued a Final Order involving

Mr. Butt and imposed an "administrative penalty" of \$750 against Mr. Butt for violations of rules.

5. On or about November 14, 1996, the Texas Department of Licensing and Regulation issued a Final Decision and Order involving Mr. Butt and imposed an "administrative penalty" of \$500 against Mr. Butt for violations of rules.

6. Mr. Butt signed his application for auctioneer registration in Wisconsin on October 25, 1995 and filed it on October 30, 1995.

7. In his application, Mr. Butt answered "no" to the following question: "Has any licensing or other credentialing agency ever taken any disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation or revocation?"

#### CONCLUSIONS OF LAW

1. The Auctioneer Board has personal jurisdiction over Abid M. Butt, based on his holding a credential issued by the board, and based on notice under sec. 801.04(2), Stats.

2. The Auctioneer Board is the legal authority responsible for issuing and controlling credentials for auctioneers, under ch. 480, Stats., and it has jurisdiction over the subject matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., see. 480.24, Stats., and ch. RL 126, Wis. Admin. Code.

3. Mr. Butt made a material misstatement in his application for a certificate by stating in his auctioneer registration application to the Wisconsin Department of Regulation and Licensing that no licensing or other credentialing agency had ever taken any disciplinary action against him, when he had been the recipient of disciplinary action in both Virginia and Texas, contrary to sec. 480.24(2)(a), Stats.

4. Mr. Butt's actions which led to Findings of Fact 3. 4 and 5 above constitute „violating a law or rule of any jurisdiction, the circumstances of which substantially relate to the practice under the registration", and they are therefore unprofessional conduct under sec. RL 126.02(2), Wis. Admin. Code. Discipline in this jurisdiction is appropriate, under sec. 480.24(2), Stats.

#### ORDER

THEREFORE, IT IS ORDERED that the certificate of registration of Abid M. Butt is hereby SUSPENDED for a period of one (1) year.

IT IS FURTHER ORDERED that Mr. Butt pay the costs of this proceeding, as authorized by sec. 440.22(2), Stats., and sec. RL 2.18, Wis. Admin. Code, and if he fails to pay the costs within sixty days of the date on which a separate cost order is signed, his license will be summarily suspended, under sec. 440.22(3), Stats.

#### EXPLANATION OF VARIANCE

The board has made two material changes to the proposed decision of the administrative law judge ("ALJ"). First, the board concludes that Abid M. Butt made a material misstatement in his October, 1995 application for an auctioneer credential by stating in his auctioneer registration application to the Wisconsin Department of Regulation and Licensing that no licensing or other credentialing agency had ever taken any disciplinary action against him. In fact, he had been the recipient of disciplinary action in Virginia in January, 1992, and in Texas in March, 1995. Second, in light of this conclusion, which is contrary to that of the ALJ, the board has ordered that a substantial suspension of Mr. Butt's auctioneer credential be imposed.

#### I. THE VIRGINIA "MONETARY PENALTY" AND THE TEXAS "ADMINISTRATIVE PENALTY" CONSTITUTE "DISCIPLINES" THAT AN APPLICANT MUST DISCLOSE ON THE APPLICATION

Mr. Butt signed his application for auctioneer registration in Wisconsin on October 25, 1995 and filed it on October 30, 1995. In his application, Mr. Butt answered "no" to the following question:

"Has any licensing or other credentialing agency ever taken disciplinary action against you, *including but not limited to*, any warning, reprimand, suspension, probation, limitation or revocation." (Emphasis added).

In fact, in January, 1992, the Virginia Board of Auctioneers imposed a "monetary penalty" of \$900 against Mr. Butt for violations of regulations. Subsequently, in March, 1995, the Texas Department of Licensing and Regulation imposed an "administrative penalty" of \$750 against him for violations of rules.

On January 22, 1992, the Virginia Board of Auctioneers entered an order finding that Mr. Butt had advertised an auction in a misleading manner and had failed to comply with auction contract requirements under Virginia law. The Virginia Board ordered three monetary penalties be imposed on Mr. Butt as sanctions for his misconduct, stating:

"Butt hereby knowingly and voluntarily waives his right to a formal public hearing, admits the alleged violations of the Board's Regulations, and consents to the imposition of the following sanction by the Board.

"A monetary penalty of \$500 for regulation 3.1, \$200 for regulation 3.2.C, and \$200 for regulation 3.2.13 is hereby imposed pursuant to Virginia Code Section 54.1-202 for a total of \$900. Payment of this amount is due within thirty (30) days of the effective date of this Consent Order."

On March 20, 1995, the Texas Commission of Licensing and Regulation entered an order finding Mr. Butt in violation of its auction laws and imposed both an administrative penalty and a Cease and Desist Order as sanctions against him:

"The Respondent having accepted the determination of the Commissioner in this case, it is hereby ORDERED and DIRECTED that:

"Respondent, Abid M. Butt d/b/a Abid Butt Company, SHALL pay an administrative penalty of SEVEN HUNDRED FIFTY DOLLARS (\$750.00) to the Texas Department of Licensing and Regulation, the receipt of which is hereby acknowledged, that being submitted on or about February 3, 1995. The Respondent, Abid M. Butt d/b/a Abid Butt Company, SHALL CEASE and DESIST from violating the statutes and rules of the Department. The Commission hereby approves the determination of the Commissioner and accepts the payment in full compromise and settlement of the complaint referenced in the Preliminary Report dated January 18, 1995."

The principal issue in this proceeding is whether or not the Virginia "monetary penalty" and the Texas "administrative penalty" constitute "disciplinary actions" in another jurisdiction for the purposes of the auctioneer registration application. It is the opinion of the board that they do.

It is the position of complainant that any sanction imposed against respondent as a consequence of his having violated auctioneer laws constitutes "disciplinary action". It is claimed that this is simply an application of the common use and meaning of the term. In the absence of a statutory definition, words are to be construed according to their common and approved usage, which may be established by a dictionary. Common dictionary definitions refer to 'discipline' as including "to bring to a state of order and obedience by training and control;... to correct; to chastise. . . ", or, alternatively, "correction, chastisement, punishment, penalty." The latter is from *Black's Law Dictionary, Revised Fourth Edition* (1968).

Complainant contends that the ALJ's determination overlooks the common usage of the word 'discipline', and would have the board adopt a narrow interpretation that focuses solely on the fact that Wis. Stats. § 480.26, contains the word "forfeiture, while Wis. Stats. § 480.24, does not. Furthermore, that approach appears inconsistent with the legislative intent of both sections which was to provide several sanctions to the board in order to effectuate the purpose of adequately protecting the public. If this were not the case, the legislature only would have provided for one type of administrative sanction. This, of course, is not the circumstance. Rather, a multiple number of sanctions have been given the board, including levying of forfeitures, in the event of violations of the auctioneer registration law. The purpose of regulatory control over the field of auctioneering is for the purpose of protecting the public. That purpose is not served by a narrow construction of the licensing law. Nor is it the result necessarily flowing from the statutory language itself

The forfeiture statute provides as follows:

**480.26(2)** In addition to or in lieu of... the remedies under s. 480.24, any person who violates this chapter or any rule promulgated under this chapter may be required to forfeit not more than \$1,000 for each separate offense. Each day of continued violation constitutes a separate offense. [Emphasis, added].

Sec. 480.24(2), provides:

**480.24(2)** Subject to the rules promulgated under s. 440.03 (1), the board may reprimand a registrant or deny, limit, suspend or revoke a certificate if it finds that the applicant or registrant ... has done any of the following:

Pursuant to the rules promulgated under s. 440.03 (1), there is the following definition:

RL 2.03 (5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a

license, to impose a forfeiture, or to refuse to renew a license because of a violation of law. [Emphasis, added]

The above rule clearly establishes that the imposition of a forfeiture is one of several sanctions that may be imposed in a disciplinary proceeding. The fact that a forfeiture may by nature have a different impact upon a registrant than a reprimand, suspension, or revocation, etc. -- as each of those will have among themselves as well -- and is specifically addressed in another statutory section, does not lead to the conclusion that a forfeiture is not a "disciplinary action" for the purposes of the question upon the application.

A forfeiture is clearly a sanction that may be applied only following a "disciplinary proceeding" in which there is found a "violation of law", just as is the case with the other enumerated

sanctions. In fact, Mr. Butt recognized at page I I of his deposition that a forfeiture is commonly understood to constitute "discipline":

Question: Have you ever been disciplined by a state licensing authority in respect to your auctioneer license?

Answer: I had a forfeiture in Texas that they send me to, you know, the final order of those two.

Furthermore, Mr. Butt's initial defense in this proceeding was not that he had not been disciplined in another state; but rather, that an employee actually completed the application incorrectly and he did not catch the error prior to signing it. [Transcript, pp. 37-38].

It is important to recognize that the objective of licensure is to protect the public from unethical or incompetent practitioners of the licensed trade or profession. *Davis v. Psychology Examining Board*, 146 Wis.2d 595, 599 (1988); *Gilbert v. Medical Examining Board*, 119 Wis.2d 168, 188189 (1984); *Hilboldt v. Wisconsin Real Estate Broker's Board*, 28 Wis.2d 474, 481 (1965). The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases including *State v. Aldrich*, 71 Wis.2d 206 (1976), and *State v. MacIntyre*, 41 Wis.2d 481 (1969). Those purposes are to: 1) rehabilitate the licensee, 2) protect the public from incompetent or unethical practices, and 3) deter other licensees from engaging in similar misconduct. Perhaps most simply stated, the purpose of the licensing laws is to protect the public, not to punish licensees.

The employment of narrow legal reasoning respecting the definition of "discipline" for application purposes would undermine effective auctioneer regulation. It could result, for example, in a respondent having been found in violation of the auctioneer laws on numerous occasions, but not having been formally "disciplined" if the sanctions imposed were always forfeitures. This is not a sound result, nor is it consistent with the intent and operation of the disciplinary process.

Furthermore, the imposition of a forfeiture as a sanction for violating licensing laws is consistent with the purpose and basis for imposing other forms of discipline. As is the case with other available sanctions, a forfeiture is only imposed in connection with a finding that a licensee has violated the law. Within the context of occupational licensing and regulation, the common function of all sanctions is to impose a burden on the licensee as a consequence of the licensee's inappropriate conduct.

Nor does the imposition of a forfeiture as discipline act so as to improperly "criminalize" the process. Wis. Stats. § 939.12, defines a crime as follows:

"939.12 Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime." (Emphasis added). 6

As indicated by complainant, action that results in imposition of a forfeiture is civil in nature when its primary purpose is remedial in nature, even though the law may also serve some deterrent and punitive goals. *State v. Schulz*, 100 Wis.2d 329 (1980); *State v. McMaster*, 206 Wis.2d 30 (1996). Consistent with this philosophy, protection of the public, not punishment of the licensee, is the primary goal of auctioneer licensing and regulation.

*Schulz* involved the issue of whether imposition of a forfeiture as a civil sanction in a traffic matter prevented later criminal prosecution regarding the same incident. The court indicated that it did not, reasoning that the defendant could lose his driver's license, be forced to attend driver safety school, and be imprisoned for failure to pay his forfeiture, all in addition to the original forfeiture. Similarly, *McMaster* dealt with the issue of double Jeopardy, holding that a defendant could be subject to criminal prosecution for violations of driving under the influence subsequent to the administrative suspension of his driving privileges. This was viewed as permissible since the primary purpose of the administrative suspension is remedial and for the protection of the public, not punishment of the defendant.

The above statute and court decisions recognize the civil nature of forfeitures and administrative sanctions. Accordingly, the fact that the board may impose a forfeiture does not convert the administrative disciplinary process into a criminal procedure.

It is the board's opinion that the monetary and administrative penalties (essentially the equivalent of a forfeiture in this state) imposed upon Mr. Butt in the states of Virginia and Texas, each constituted a "disciplinary action" within the meaning of that phrase as used within the application for auctioneer registration.

Additionally, it is clear that Mr. Butt violated the rules of professional conduct, specifically, RL 126.02(2). This rule of the board provides as follows:

**RL 126.02 Unprofessional Conduct.** Conduct evidencing a lack of knowledge or ability to apply professional principles or skills, within the meaning of s. 480.24 (2) (b), Stats., includes, but is not limited to, engaging in or aiding or abetting the following conduct:

(2) Violating a law or rule of any jurisdiction, the circumstances of which substantially relate to the practice under the registration.

When Mr. Butt failed to disclose the actions taken against him in the states of Virginia and Texas, the effect was to conceal the fact that he had violated substantially related laws in those states and that action had been taken against him for those violations. It is exactly this type of information that the question on the application is intended to elicit.

Furthermore, it must be noted that the question includes the phrase: "included but not limited to."

That is intended, at least in part, to encompass cases such as this where another state may use

terminology not used in Wisconsin, or may have additional sanctions not necessarily reflected in this state but which are disciplinary sanctions available in other states. Here, we have such an instance in that Virginia imposed a 'monetary penalty', and Texas an administrative penalty".

## 2. DISCIPLINE

Having found that Mr. Butt made a material misstatement in his application, in addition to having violated substantially related laws in other states, the question becomes one of the appropriate discipline to impose. As stated earlier, the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the registrant, 2) to protect the public, and 3) to deter other registrants, or applicants for registration, from engaging in similar misconduct. Again, punishment of the registrant is not an appropriate consideration.

Given the serious nature of the violations found, especially that of providing a material misstatement on the application, as well as the need to deter others from engaging in such misconduct, the board is of the opinion that Mr. Butt's registration should be suspended for one year. The board agrees that costs should also be imposed.

The issue is not whether Mr. Butt would have been granted a registration if he had disclosed the violations of auctioneering laws in other states. Rather, the question involves the discipline appropriate to assure the integrity of the application process, itself. That process must by necessity rely almost exclusively upon the truthfulness of the answers provided by an applicant. Strong measures are required in order to deter others who may be tempted to undermine the registration process by failing to "self-report". In a very real sense, Mr. Butt's providing of false information on the application is arguably much more serious than the specific out-of-state violations he failed to disclose.

Complainant recommended either a substantial suspension or an outright revocation of the registration of Mr. Butts. The board believes that a one-year suspension of the registration of Mr. Butts is sufficient to adequately convey the message to other registrants, and applicants, that the filing of false applications will not be tolerated and will be dealt with through strong measures.

Dated: April 26<sup>th</sup> 1999.

WISCONSIN AUCTIONEER BOARD

Richard O. Lust, Chair

